IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. W.P.NO.1149 OF 2004
WITH
CRI. W.P.NO.1150 OF 2004
WITH
CRI. W.P.NO.1151 OF 2004

Datar Switchgear Ltd.
and Ors. ..Petitioners

Vs.

Bank of India & Anr. ..Respondents

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Mr.Shirish Gupte Senior Advocate i/b
Mr.Shaunak Satpute and Co. for Petitioners
Mr.Pritesh Rajgor i/b M/s. D.S.K.Legal for
Respondent no.1
Mr.B.H.Mehta A.P.P. for State
in 1149 of 2005
Mr.V.B.Konde-Deshmukh A.P.P. for the State
in 1150 of 2005
Ms.S.V.Gajare A.P.P. for State in 1151 of 2005

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 25, 2005

P.C.

1. Heard the learned counsel for the petitioners, learned advocate for the respondent no.1-complainant and the learned A.P.P. for the State.

2. The petitioners are seeking quashing of process issued by the learned Judicial Magistrate F.C. (A.C.Court) Pune in C.C.Nos.3581 of 1999, 5301 of 1999 and 154 of 2003 (Old Case No.461 of 2000) of (MV Court) Pune. In the said case process was issued against the petitioners under Section 138 of Negotiable Instruments Act. The petitioners had preferred an application for recalling of process before the learned Magistrate. However, in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and others reported in (2004) 7 SCC 338**, it is well settled that the Magistrate does not have the power to recall process. The learned counsel for the petitioners states that the said applications would be withdrawn by them.

3. For the reasons recorded in the decision of this Court in the case of **V.K.Jain and others Vs. Pratap V. Padode reported in 2005(3) Mh.L.J.778,** I am of the opinion that the petitioners have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the

petitioners prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the petitioners makes a statement that the necessary revision will be preferred within six weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of six weeks.

. The learned advocate for the respondent no.1-complainant fairly states that the matters will be argued solely on merits before the Sessions Court.

5. On the necessary revision being preferred by the petitioners before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties. All contentions of the parties on merits are left open.

6. Writ petitions are disposed of.

[V.K.TAHILRAMANI,J.]